5. Waters and Water Courses (§ 179 (1)*)—Remaindermen Occupying as Tenants Held Entitled to Enjoin Interference with Drain.—Where remaindermen occupy land as tenants from year to year, they have, in either capacity, such a substantial interest in the property and the appurtenant easement of drainage as to entitle them to maintain a suit to enjoin interference with a drainage ditch.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 534.]

6. Costs (§ 48*)—Costs Properly Awarded Defendant Having No Interest in Suit.—Where in a suit to enjoin interference with a drainage ditch it appears that defendant before suit had sold the land upon which he was charged with obstructing the drainage, it was proper to dismiss the suit as to him and to award him his costs.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 645.]

Appeal from Circuit Court, Accomac County.

Suit by William D. Holland and others against J. Stewart Mathias and another. Decree for complainants, and respondent named appeals. Reversed and remanded.

Mapp & Mapp, of Accomac, for appellant.

Benj. T. Gunter and *Warren Ames,* both of Accomac, for appellees.

HALE *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 136.]

1. Indictment and Information (§ 121 (4)*)—Bill of Particulars Not Defective for Failing to Specify Kind of Liquor Sold and to Whom Sold.—In a prosecution under an omnibus indictment framed under Acts 1918, c. 388, § 7, for the unlawful sale of ardent spirits, the failure of a bill of particulars given on request by defendant, alleging that the state expected to prove that defendant sold ardent spirits, in view of the fact that "ardent spirits" are defined in section 1 of the act, and section 60, providing that it shall not be necessary to allege a gift or sale of ardent spirits, to state what kind of liquor was sold, did not render it defective.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 403.]

2 Intoxicating Liquors (§ 236 (13)*)—Evidence Held Sufficient to Sustain Conviction for Selling.—In prosecution for illegal sale of ardent spirits under Acts 1918, c. 388, § 7, evidence as to the nature of the beverage sold held sufficient to support a verdict of guilty.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 34.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Madison County.

John S. Hale was convicted of unlawfully selling ardent spirits, and he brings error. Affirmed.

Will A. Cook, of Madison, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and *Leon M. Bazile, Second Asst. Atty. Gen.,* for the Commonwealth.

JAMES *v.* McGUIRE.

March 16, 1922.

[111 S. E. 136.]

1. Lost Instruments (§ 8 (1)*)—Grantor Claiming that There Was a Mutual Mistake in the Deed, and that It Had Been Obtained by Fraud, Had Burden of Proof.—In grantee's action to require grantor to re-execute deed which the grantor had obtained possession of and had destroyed, the grantee, claiming that there was a mutual mistake in the deed, and that it had been obtained by deceit and fraud, had the burden of proof on such issues.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 479.]

2. Lost Instruments (§ 8 (3)*)—Evidence Held Not to Prove that There Was a Mutual Mistake in Deed, or that It Was Obtained by Fraud.—Where the grantor conveyed land to grantee in consideration of the right to live in the house with grantee, but thereafter procured possession of the deed and destroyed it, evidence in grantee's action to require grantor to re-execute deed held insufficient to sustain grantor's defense that there was a mutual mistake in the deed, and that it had been obtained by deceit and fraud.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 480.]

3. Lost Instruments (§ 10*)—In Action to Require Re-Execution of Destroyed Deed, Equity May Modify It to Express Intention.—In grantee's action to require grantor to re-execute deed after he had obtained possession thereof, and had destroyed it, defended on the ground that there was a mutual mistake in the deed, and that it had been obtained by deceit and fraud, equity in requiring grantor to re-execute the deed has the right to modify it so as to more clearly express the intention of the parties.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 903.]

Appeal from Circuit Court of City of Lynchburg.

Action by Annie D. McGuire against William R. James. Decree for the plaintiff, and defendant appeals. Amended and affirmed.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.